

Insights

Under New Hospital Cost Transparency Requirements, Is the Cost of Noncompliance Now Too Much?

August 11, 2021

By: Brandon W. Shirley and Thomas N. Hutchinson

The Centers for Medicare and Medicaid Services ("CMS") is prepared to increase hospital cost transparency penalties for noncompliance established under prior rules beginning January 1, 2022. In a **proposed rule** published on July 19, 2021, CMS proposed several new requirements that include: 1) basing a hospital's noncompliance penalty on its bed count; and 2) prohibiting certain conduct that CMS has concluded is a barrier to the public's ability to access the hospital's cost information. CMS is also seeking information in the proposed rule regarding the hospital's price estimator tool option, whether to require a plain language requirement when describing shoppable services, and improving the standardization of the machine readable file so that all hospitals are uniform. CMS believes that hospitals are not properly following the law and that these changes will better eliminate barriers that limit price transparency, increase competition among hospitals, and reduce medical costs. CMS is accepting comments on the proposed rule until September 17, 2021.

More specifically, CMS proposes to increase the monetary penalty for noncompliance from a standard rate of \$300 per day for any hospital to a penalty based on "bed count," as established by the hospital's most recently filed cost report. Under the proposed rule, maximum penalties for noncompliance would include:

Number of Beds	Daily Penalty	Total Calendar Year
30 or less	\$300 per hospital	\$109,500
31 up to 550	\$310 - \$5,500 per hospital (number of beds times \$10)	\$113,150 - \$2,007,500 per hospital
Greater than 550	\$5,500 per hospital	\$2,007,500 per hospital

CMS also proposes to eliminate barriers that hospitals have, intentionally or unintentionally, put in place to limit a person from "easily accessing" the hospital's charge information, i.e., the machine-readable file. According to CMS, such barriers include usernames, passwords, requiring CAPTCHA, and pop-up windows. To address such barriers, CMS is proposing to require that a hospital's standard charges be "easily accessible to automated searches and direct file downloads through a link posted on a publicly available website."

CMS is seeking comments on several other proposals to make a hospital's charge information more publicly available and accessible. In particular, CMS is considering whether to make a hospital's use of a price estimator an alternative to making public the hospital's charge information so long as the price estimator can be tailored to the individual, among other requirements. CMS is also considering certain standardization requirements so that the public can expect the same information from each hospital and whether to require information in "plain language."



The hospital cost transparency requirements have been in place since 2020 and existing requirements must continue to be followed notwithstanding the proposed rule. Please contact **Brandon W. Shirley** or **Thomas N. Hutchinson** if you need assistance complying with these issues.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have. In addition, marijuana remains a federally illegal Class I drug. All activities related to marijuana are currently illegal under the federal laws of the United States and nothing contained in this alert is intended to assist in any way with violation of applicable law.